G. R. S. 58]

Previous references.

Jul 758 & 1-03-04-1
259-07 (1-7)
67-09 (9&10)
71-07 (1-6)
36-02

Later references.

Rel 414-12 R 1
Rel 17527 R 1 & 2 B Nov 10
II 13-17 (15716)

1910.
(Municipal)

File No 67-09

Serial Nos 7, 12, 26-31
34, 35

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 7, 12, 26-31, 34, 35 & 36.

Part B for Nov^{r}, 1910

SUBJECT

Acquisition of properties for public purposes in the Mysore City

---

3 from the Chairman, Mysore City Impt Trust Bd, no 902 & 11 10 09 forwards the file of papers in the matter of acquisition of a portion of survey no 429 belonging to Anjasami Mudaliar and requests that, for reasons given by him, the Chief Court may be moved to revise the order of the Sub-Judge of Mysore in the matter

12 to the Do, Dy Com^{r}, Mysore & Govt Advocate, Cy. no C 20-22 & 31 10 09 Requests the Govt Advocate to move the Chief Court under Sec 622, C P C, to revise the order of the Sub-Judge of Mysore in the case referred to

26 from the Govt Advocate, no 98 & 20.9.10 Reports that judgment was delivered on the above case dismissing the appeal for reasons given-

G R.S 11] 1909-1910

GENERAL AND REVENUE SECRETARIAT

(Mis.)

NOTES.

File No. 67-09

FILE HEADING

Acquisition of properties for public purposes in the Negapatam City

From

The Chairman, Negapatam City Municipal Council

No 902 Dated 11-10-09 Received 14-10-09

Diary No 2654 | Enclos. 1 Cycle | Spare Copies — | Serial No 7

BRIEF ABSTRACT OF LETTER.

Forwards the file of papers in the matter of the acquisition of a portion of survey No. 429 belonging to Arjunaswami Mudaliar and requests that, for reasons given by him, the Chief Court may be moved to require the services of the Sub-Judge of Negapatam in the matter.

NOTES AND ORDERS

The file may if it is submitted be forwarded to the Govt. Advocate-General for favour of opinion

16.10.09 M.A.D.

19.10.09 Forwarded to the Govt Advocate per favour of opinion.

18-10-09 K. Gopalarao for Secy

Notes—First sheet

GPB—30,000—3-1-09

Serial No.

3 The order of the Sub Judge that he had no jurisdiction to proceed with the reference on the ground of an alleged irregularity in not issuing notices under Section 9 of the Land A Regln seems to be erroneous The Judge has not, as a matter of fact, found that the persons interested in the land were not aware of the proceedings held by the Acquiring officer

4 A bona fide award by the Acquiring officer is not vitiated by a mere irregularity in his proceeding which is not a Judicial one but is one administrative act binding on the Govt only, and the party dissatisfied with it may contest it in Court (under the reference) as to the proper amount of Compensation &c

5 The suit must be considered as the cause open for getting the order set aside

6 Under Section 54 of the Reg. an appeal lies against an award

Note—Contn. sheet

Re File No. 67 of 1909

Serial No.

made by the Court that the order in question cannot be called an award at all. The only other course is to move the Chief Court under section 622 C P C Which should, according to the practice of the Court, be done within 90 days from the date of the order in question, which date expires on Monday the first proximo

I should then counsel be decided on, a Vakalathnama signed by the Dy Commr and President of the Trust Board may be forwarded with the certified copy of the order of the Court, so as to reach me on Monday morning

As there is no time to send this by post, my office clerk has been deputed to take this Muddam to Mysore

S Narayana Rao
30 10 09 Govt Advocate

& The Chief Court may be moved as advised by the Govt Advocate - Draft submitted.
14 Cr)

9 Approved HMR 30/10/09 P.S.

NOTE—Contin. sheet

GPB—32/20—27-4-09

Form No. 19
General and Revenue Secretariat.

Misc. File No. 67 of 1909

4

Serial No.	
	To Issue at once the copy to the Govt Advocate may be sent with the necessary papers with the Clerk who brought the file from Bangalore 31-10-09 Issued
12	4 S O No C No 20 22 Dated the 31st Oct. 1909 Requests the Govt Advocate to move the Chief Court under Sec 622 C.P.C. to revise the order of the Sub-Judge of Mysore in the Case referred to
26	12 Letter No 98 Dt 20 9 1909 from the Govt Advocate Reports that judgment was delivered in the case on the 9th inst holding that Mr D S Venkatasama Rao had no jurisdiction to pass the Award as he was not empowered to exercise the powers of a Dy Com under the Land Acqn Regn or other grounds and recommends the appeal ~~Sent for Calling for the Records with the Case is instructed~~
27	13 Letter No 20 Dated the 21st Sept. 1910

m—Contn. sheet.

GPB—20,000—12-9-08

G. R. S. 12]
General and Revenue Secretariat

MR File No. 67 of 1909

Serial No	
	Ltr from the Chairman Reports the above decision of the Chief Court and requests the Govt's Orders of the 17th June 1908 and 19th June 1909 may be authoritatively interpreted as having the effect of specially appointing Mr. Krishnaswami Rao to perform the functions of a Dy. Comr. under the Land Acquisition Regulation. Draft calling for the record of the Case from the Chief Court & submitted as per Asstt. Secy's instructions MR Song 15 Issue 23/9 23 9 10 Issue
28	To the Regr. chief Court, no 2925 dt 23 9 10 Requests him to forward for perusal by the Govt, the entire record connected with Mrs Appeal no 31 of 1909-10 on the file of the chief Court (Chairman, Bangalore city Muslim Trust Board Vs Ayyasami Mudaliar & another)
29	To from the Chairman, Bangalore re

Note—Contn sheet

GPB—35,000—27 4.09

G. H. S. 12.]
Land and Revenue Secretariat.

Land File No. 67 of 1909

6

Serial No.

Land Trans Bd, no 21 of 21 9 10

Offers certain suggestions for the consideration of Govt, and states that if Govt publish a declaration of the interpretation of these provisions, viz, no 6882-8/Land M-0/4 of 17 1 1908, letting at rest all doubts regarding the validity of the acts hitherto performed by the Regr Offices of Bds, there will be no dispute as to all acts except in the case of Nyasaland where the judgment of the ch court is final, and that even in this case it would be a question after perusal of the judgment of the ch court whether it is not a fit case for an application for a review of the judgment.

2 The records called for from the Regr of the ch court have not yet been received. Shall this await the receipt of these papers?

Submd

Sd Young 9 Yes
24 9 10. 24 9 10 Mle

20 Letter No 102 dated the 24th September from the Govt Agt

Reports that the appeal under reference has been dismissed and submits a copy of the order passed by the

Over.—Contn. sheet.

R. S. 12]
General and Revenue
Secretariat

Mb File No 67 of 1909

Serial No

The Hon'ble Judges in the Case
of Letter No 1477 dated the 24th Sept'r '10.
from the Registrar of the Chief Court
forwards the entire records of the Case
22 File received with the following
Books :-

(1) Indian Law Reports XXXII Cal.
(2) do XXX Bom.
(3) Govt Acts of the Governor General
of India in Council - 2d Edition of
1904,

27/9/10 23 Of the several irregularities noticed by the Chief Court, the first is that "it appears to be very doubtful whether the officer who made the award had ever been specially appointed by the Govt to perform the functions of a Deputy Comr under the Mysore Land Acquisition Regulation of 1894".

24 Shortly after the passing of the City of Mysore Improvement Regulation in 1903, a notification was issued by Govt investing the Police with

shee

Serial No

with the powers of a Deputy Commr under the Land Acquisition Regulations In Jan 1908, the Deputy Comr of Mysore was appointed ex-officio Chairman of the Trust Board in place of the ~~first~~ whole-time Chairman, and it was observed among other things that the Municipal Vice President would be able to carry out the work of ~~the~~ acquisition and that what was chiefly required of the Chairman was to exercise watchfulness and a general control over the working of the Board and bring his influence to bear on the officials in charge of the different sections - No notification appointing the Vice President to perform the functions of a Deputy Comr, similar to that one issued in the case of the Chairman, was however issued, but the Chairman says that the order was understood to mean that the Vice

sheet

GPB—55/100—27-4-09

Revenue Department. | Rel File No. 67 of 1909

Serial No.

President was appointed to perform the functions of the Deputy Comr and was acted upon on that understanding - The Chairman refers also to the order of 19th June 1909 directing that Mr Krishnaswamy Rao be placed solely on land acquisition work connected with the Trust Board and to issue a declaration for the acquisition of certain properties outside the area under the operation of the Trust Board, whereas the Vice President was described as the Acquisition Officer of the Mysore City Improvement Trust Board, and argues that these support his interpretation of the first order that the Vice President was appointed to perform the functions of a Deputy Comr under the Land Acquisition Regulation - There seems to be much force in Mr Chairman's argument and it is not known if it was not the intention of the Govt to at

Serial No.

reference should have been made by the Acquisition Offic who passed the award and no by the Chairman - Both of them are officers specially appointed under the Land Acquisition Regulation and may be considered as having concurrent jurisdiction but this does not ~~prevent the interference~~ authorize by one of them with the awards passed by the other - Cases may be imagined in which a special appointment under the Land Acquisition Regulation has ceased to exist by the special officer being relieved or otherwise before an application could be made and reference requested under sec 18 and in such cases, it seems to be the Deputy Comr and not any other officer who can receive the applications and make the reference -

2b The Hon'ble Chief Secretary

Serial No.

noticed is that the party did not in his written application require in express terms a reference to Court -

2) As the appeal has been thrown out on all several grounds referred to above and some of them cannot be controverted, there seems to be no use in applying for a review of the judgment As already suggested above, an order may issue appointing the Vice President to perform the functions of a Deputy Comr under the Land Acquisition Regulation and stating that by their previous orders, Govt intended that he should perform such functions -

Secy) 29 9-10 Mlle

28 Please submit a draft consult for advocate as personally instructed

CBS
3/10/10

29 Draft submitted

MLS 29
5/10

MW
3 10
P 7.10

Note—Contin sheet

GPB—14,000—27-4-09

G R S. 12]
General and Revenue Secretariat.

Ml File No. 67 of 1909

13

Serial No

UR37

30. Forwarded to the Govt Advocate for favour of opinion as regards the proposals contained in the Chairman's letter dated 21st Sept 1910 and the draft order proposed to be issued.

By order
K. Raghavendra Rao
for Secy

9.10.21
dtd 8-10-10

W 11/10

31 I am of opinion that the awards passed under - section 11 and references made under section 18 of - the Land Acquisition Regulation by Mr. Krishnaswamy Rao, on the strength of the order of Government dated 12th June 1909 can only be validated by a special enactment and not by an executive order explaining the scope of the said order.

2 — The said order of Government merely directed - that Mr. Krishnaswamy Rao "be placed solely on the - acquisition work connected with the Trust Board". - This evidently means that he is to do the acquisition work of the Trust Board which was authorised by the Mysore City Improvement Regulation to acquire lands by negotiation with the owners thereof The functions of an officer of the Trust Board under the Mysore City Improvement ---- Regulation are entirely different from those of a --

Note—Contin sheet.

GPS—5,000—27-4-09

General No.

Mr. Krishnaswamy Rao is also the acquiring officer of the Trust Board, does not amount as already stated that he was invested with the functions of a Deputy Commissioner under the Land Acquisition Regulation.

If my information be correct, there were only very few cases in which the parties were dissatisfied with the awards passed by Mr. Krishna Rao and in which references have been made to the Civil Court for determination of the amount of compensation or the persons entitled to receive the same. In these circumstances, the best course to adopt, in my opinion, is, to issue a notification to the effect that Mr. Krishnaswamy Rao or the senior Vice President of the Mysore Municipality is appointed to exercise the functions of a Deputy Commissioner under the Land Acquisition Regulation, and that the intention of Government in issuing Government order No. 12800-4/ml 330-08-4 dated 19th June 1909 was that Mr. Krishnaswamy Rao should exercise such functions. Mr. Krishnaswamy Rao may be further instructed to withdraw any pending references and pass fresh awards should the parties concerned so desire. This will not subject the Trust Board to any additional loss, in as much as the amount that will have to be paid as compensation is the market value of the land as it stood on the date of the publication of the declaration under section 6 of the Land Acquisition Regulation (vide section 23 (1)) which in the present case is the date

GPB—30,000—12-8-10

G R S. 12]
General and Revenue Secretariat.

Mdl File No. 67 of 1909

Serial No.

date of the notification under section 18 of the City -- Improvement Regulation, nor will this take of require much time, being merely a formal matter.

I do not think it advisable to apply for a review as suggested by the Chairman of Board, of judgment of the Chief Court, for the reason that the judgment is correct.

L. Narayanaswamy
Govt Advocate

8-10-1910

32 — File sembumudi.

Reading 33 A notification as suggested by the Govt Advocate seems unnecessary - The draft order seems sufficient.

Thyagasamy Mudaliar is said to have filed a separate suit against the person now in possession of the property for recovery of possession and damages and obtained a decree in his favour. An appeal against that decree is said to be now pending. The result of that appeal may be awaited before the issue of any instructions to Mr. Krishnaswamy Rao as suggested by the Govt Advocate ex

Secy) 13-10-10

Note—Contn. sheet

G R S. 12]
General and Revenue Secretariat.

Ml File No. 67 of 1909

9

Serial No.

1 The draft order may be approved and issued. But I agree with the Govt Advocate in thinking that it will not answer to serve to validate the awards already passed by the Vice-President some of which are the subject matter of litigation in the Civil Court. The only proper remedy would be a validating regulation or the simpler process of having fresh awards as suggested by the Govt Advocate. However, the present order may be issued & we may see what interpretation the courts will place upon it. I understand that some cases are posted for hearing before the Subjudge on the 27th Inst.

Dewan through 1st & 2nd C

C S B
25/10/10

36

1095
25 10 10

The second Councillor's opinion may be obtained with advantage in this complicated question. I see no harm in issuing the proposed order which will not however set the matter at rest. Further development may be watched

H M M
25/10/10

Dewan (through 1st C)

NOTE— Contn. sheet

GPS—50,000—12-8-10

Serial No.

36 I do not think that all the objections raised in the judgment of the Ld Chief Judge are beyond dispute. I think it was quite possible to accept the proceedings of the Acquisition Officer as valid on some of them. But I see no means of getting over the defect that the reference was not made by the Officer who actually made the award. There is no use in asking for a review.

It is unfortunate that the local authorities in Mysore did not pay sufficient attention to the legal requirements of the matter. It is a question whether Govt should identify itself with their mistakes by passing a declaratory order like the one now drafted, and show that there is a difference between Govt and the Chief Court. The more correct thing, it seems to me, is to assume the correctness of the decision. We may therefore content ourselves with making the appointment in express

GPB—60,000—12-6-10

Serial No

terms now From what the Vice President told me in Mysore, I do not expect that the matter will create difficulty in any other cases, if we instruct the Dy Cr that legal awards should be newly made in all cases of dispute before going to Court If a few cases do crop up we should meet them as best we may in the circumstances of each case, by private negociation or by other means.

37 If, however, it is considered necessary to pass a declaratory order also, I would not enter into arguments at all & keep them to be advanced when necessary in Courts.

I would say shortly that by various orders passed from time to time, Govt meant to confer the powers in dispute on the Vice President

Serial No

but that since a doubt has been expressed by the bl ct in a case (the I. Govt now appeal them as such, in order to remove all cause for such doubts in future.

3rd I need hardly add that our declaration, in whatever terms couched, will not give any additional force to proceedings already taken, and that the case is of too little importance to justify any ex post facto legislation.

1/11/10

(Hon)

3/31 (3rd) 6 11 10

Read 4 11 10

3rd Dewan)

I agree with the general remarks of the 2d Counsellor and the specific recommendations of the Solicitor — Please

4/11/10

tn sheet

GPS—55[illegible]—27-4-09

Serial No.

Yours (with Mr Carlisle's opinion) The Ship and the declaration proposed in para 5 of Mr Advocate's opinion — Should appear in next Thursday's (10th Nov) Gazette

40 Draft as under

7/11/10

41 Draft Notice submitted (Mahd Secy) 7 11-10 Mlle 7-11-10 A Sm & 7/11

7/11/10

42 Draft subject to 2nd Cr

43 The Notice is all right. 7/11/10

I think the remarks might be better in Sent on case separate for 2 order of the same date.

7/11/10

44 1882 also before issue 7/11/10

Mlle 8 11 10

Note—Copies sheet. 11884 8 11. 10

Mlle 7 11-10

Serial No

45 Issue at once

[illegible]

[illegible]

8 11 10

36 Gb Note no 3892 Dy 8 11 1910

Notifies that for purposes of section 23 of the Bangalore City Municipal Regn the Senior Vice-President of the Municipality is appointed to perform the functions of the Deputy Commr under the Land Acqn Regn.

Page 455 of Part I of the Gazette Dy 10 11 1910

Memo no 3893 Dy 8 11 1910

Forwards copy to Chairman.

35 47 G.O no. 3894-5 Dy 8.11 1910

Observes that by the various orders issued from time to time Govt meant to confer on the Senior Vice-President of the Bangalore City Municipality the powers of Deputy Commr under the Land Acqn Regn but that since doubt has been expressed by the Chief Court in the case under reference Govt have come to a decision to withdraw all those powers in order to remove all cause for such doubts in future issue certain instructions with reference to the requisition cases pending adjudication.

23&24

C.S. 9 Trust Board 23
Confidential 2249/10

Dear Mr Govinda Rao

As directed by the Dewan Saheb, I left a reference addressed to the Secretary & took with him yesterday. In continuation of that I am enclosing another for the perusal and orders of the Dewan Saheb. This reference

25 [illegible]

Dear Mr [illegible] Rao

D 2810 The doubt Expressed by the Judges of the Chief Court in the Case of The Municipal Board Bijapur Mr Abdulkhan has not as yet been removed by Govt. The two Cases that were for hearing on the 27th of last month were adjourned to the 10th Inst.

IV
mvu
13-10-9
1909

D 2652

From

The CHAIRMAN of the Board of
Trustees for the Improvement
of the City of Mysore.

To

The SECRETARY to the Govt. of
His Highness the Maharaja of
Mysore, Gen. and Rev Depts.

Dated
Despatched } 11-
Received
General No. 902
Enclosures Abstract

SUBJECT

Forwarding copies of papers regarding the acquisition of certain land known to belong to Thyagaraja Mudali of the Mysore Village and praying his Highness's permission to purchase the said land as required to prevent the waters of the Sub Judge's Well in the matter

Mysore City Improvement Trust Board,
Chairman's Office,
Dated, Mysore, 11th October *190*

From

K.Chandy Esq., B.A.,
Chairman of the Board of Trustees,
Mysore City Improvements.

To

K S.Chandrasekhara Aiyar, Esq , B.A., B L
Secy to the Govt of His Highness the Maharaja
of Mysore, Gen and Rev De

SIR,

Ml 67-09
SL-7

I have the honour to report that a portion --- measuring 3 acres, 14 guntas and 99 square yards of land out of survey No 429 in the Mysore Village of the Kasaba Hobli, known to belong to one Aiyyasami Modaliar, and notified by Government in part I of the Mysore Gazette, page dated the 1st December 1904 as being required for purposes the improvement of the Mysore City, was acquired by the T Board in October 1907 and converted into building sites These sites were sold by the Board to the persons that were in need of them and most of these purchasers raised build on the same While, however, one of them, named Rachia ali Puttasamy who was the last to start construction, was buil on his site, the said Aiyyasami Modaliar prevented him and filed a suit against him in the Court of the Principal

Munsiff of Mysore for trespass and wrongful possession

2 Aiyyasami Modaliar would not agree to sell the --- land needed by the Board under any amicable settlement The only course left therefore was to acquire it under the Land Acquisition Regulation of 1894, as per Section 23 of the City of Mysore Improvement Regulation Accordingly an award was made for it on the 14th December 1908 under Section 11 of -- the Land Acquisition Regulation fixing its value at --------- Rs 387-0-9 and providing also a sum of 15% on the said value in consideration of the compulsory nature of the acquisition, in addition to allowing an interest at 6% per annum from the date of taking its possession viz, from 1st October 1907, -- thus raising the total award of compensation to Rs 415-11-0 This award was duly communicated to the said Aiyyasami Moda- -liar and Akki Angadi Marianna, another party known to be -- interested in the land in question, as its mortgagee But Aiyyasami Modaliar did not accept the above award and conse- -quently a reference was made to the Court of the Sub-Judge of Mysore under Section 18 of the Land Acquisition Regulation in this office letter No 383 of the 26th January 1909 In the disposal of this reference the Court held that the said reference was not made in pursuance of the Land Acquisition Regulation and that therefore it had no jurisdiction to try

try the suit under that Regulation.

3. As will be seen from the copy of the Court's order in this suit (O.S.No.36of 1908-1909), the only ground under which it entertained this view was, that no notice was issued under Section 9 of the Land Acquisition Regulation. The Board is not, however, prepared to accept that the omission to give notice under Section 9 of the Land Acquisition Regulation was sufficient to invalidate all the proceedings taken under it. The object of issuing such notice had, for all practical purposes been gained as explained in the accompanying note of the Acquisition Officer of the Board. The Public Prosecutor, Mysore Division, to whom the defence of the case was entrusted suggests that an application may be made to the Chief Court to revise the Sub-Judge's order in the case. The members of the Board of Trustees are unanimously of opinion that the Chief Court should be roved in the matter.

4. In these circumstances, I have the honour to request you to be so good as to move the Chief Court through the Government Afvocate in the matter of revising the order of the Subordinate Judge, as suggested by the Public Prosecutor.

5. The order of the Subordinate Judge under reference is dated the 29th July 1909, and I beg to bring this to

to the notice of Government so that the application may be made within the time allowed by law

6 The papers furnishing all the details of the case are forwarded herewith as per accompanying list, for favour of --- perusal and orders

I have the honour to be,
Sir,
Your most obedient servant,

for Chairman

No 90/09 2652/5

C No 20-22 Int 7-67-09 Coorg Improvement

Read Slip Dt 31.10.09

Letter No 902 of the 11th Oct'09 from the Chairman of the Board of trustees for the Improvement of the City of Mysore requesting that the Chief Court of Mysore may be moved to revise the order of the Subordinate Judge of Mysore in O S No 36 of 1908-09 on the file of his Court, to the effect that the Court has no jurisdiction to try the Suit relating to the award made under the provns of the Mysore L A Regn in respect of 3 acres, 14 guntas & 998-3/5 of land out of S. No 429 of the Mysore Village, acquired by the Trust Board and forwarding a file of papers relating to the Subordinate case in Quest.

Order thereon:—

The Govt Advocate is requested to move the Chief Court under Sec 622 C.P.C to revise the order

of the Lib Judge of Mysore in
the case above referred to.

For Secretary

30/10/09

To:

The Dy Commr Mysore Dist

1. Chairman of the Mysore City Municipal Council
2. Govt Advocate with the papers for reference and return in due course
3. ~~Registrar of the Chief Court of~~ Mysore

Enclosures to
+ Chairman's letter No 902 D/11 to 09 dtd 30-10-09
1 Power of attorney

A Sch for the
refund application
Notes 5/31/1

Inw 20-09

D 2034

Rupl-67-09-2

G R.S 45]

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

GENERAL AND REVENUE DEPARTMENT

No. , *dated the* 19-9-1910

2722 (Rupl)

To

The Govt. Advocate

REPLY

No. 98 , *dated the* 20-9-1910.

To

The Secretary to the Government of H H the Maharaja of Mysore, General and Revenue Dept.

SUBJECT

Requesting him to move the Chief Court to revise the order of the Sub-Judge of Nagara in O.S. No 36 of 1908-9

OFFICE MEMORANDUM

The undersigned is directed to invite attention to the marginally noted communication and to request that the General and Revenue Secretariat may be informed, in the column opposite, of the cause of delay in furnishing a reply and of the approximate date on which a reply may be expected

He is also to request that the General and Revenue Secretariat may be favoured with a reply to this reminder not later than the 4th Oct 1910

C 20-23

Rupl 67-09-12

*No , dated 31 10 9

By Order,

Illegible

for Secy

* Previous reminder

Sir

I transmit herewith a copy of the Judgment delivered on the case referred by holding that the Hon'ble Krishnaswamy Rao had no jurisdiction to pass the Award as he was not empowered to exercise the powers of a Civil Court under the C.P. Regulation, that the C.J. Chairman had no power to make the reference to Civil Court as he was not the officer who made the Award and that neither the Chairman nor the Krishnaswamy Rao could have referred the matter to Civil Court as it was at the request of the party interested to make such a reference under Sec 18 C.P. Reg. The appeal was dismissed and each party was directed to bear their own costs. As the matter is

Submitted 8501 & 29 3 10

Illegible

A. Narayana Rao

Govt Advocate

20. 9. 1910

GPB—12,000—8-4-08.

From

The CHAIRMAN of the Board of
Trustees for the Improvement
of the City of Mysore.

To

The SECRETARY to the Govt of
His Highness the Maharaja of
Mysore, Gen. and Rev Depts.

Dated } 21st Sept 1910
Despatched }
Received

General No. 20

Enclosures

SUBJECT

Re the powers of Mr.M.G. Krishnasami Rao to perform the -- functions of a Deputy Commissioner under Land Acquisition Regulation VII of 1894.

20 & 21

Rcpl ~~4310~~
67-09-27

Mysore City Improvement Trust Board,
Chairman's Office,
Dated, Mysore, 21st September 1909

From

M.Kantharaj Urs, Esq., B.A.,
Chairman of the Board of Trustees,
Mysore City Improvements.

To

C S.Balasundaram Iyer, Esq , B.A ,
Secy to the Govt of His Highness the Maharaja
of Mysore, Gen and Rev Departm

SIR,

R

In Government Proceedings No.6862-8/M1.77-07-6 dated Bangalore 17th January 1908, it was indicated that the Municipal Vice-President of the City Municipal Council, Mysore, would, on being relieved of the most onerous of his duties, viz , charge of the Conservancy Establishment, be able to carry out the work of land acquisition under the Mysore City Improvement Trust Board, and by Government Order No 12800-4/M1 350-08-4 dated the 19th June 1909, Mr.M.G. Krishnasami Rao, Vice-President for the Mysore City Munic Council, was placed solely on land acquisition work conn with the Mysore City Improvement Trust Board

Copy 2 to S

The latter order was construed as an order of --- Government specially appointing Mr M G.Krishnasami Rao to perform the functions of a Deputy Commissioner under -----

under Regulation VII of 1894 and was acted upon as such in all cases In Notification No 6293-M1 258-07-6 dated the 6th January 1908, the Vice-President of the Mysore City --- Municipality was authorized to take order for the acquisition of lands and houses in the Vontikoppal Village And by --- Government Proceedings No 3753/M1 67-09-4 dated the 21st -- October 1909, it was declared that the Vice-President of the City Municipal Council, Mysore, " who is also the Acquisition Officer of the Mysore City Improvement Trust Board " was ---- authorized to take order for the acquisition of certain lands required for the Palace, thus emphasising the status, position and powers of Mr M G Krishnasami Rao as Acquisition Officer under the Mysore City Improvement Trust Board However, on the 19th September 1910, the Hon'ble the Judges of the Chief Court in A S No of 1909-1910, Iyyasami Modaliar VS the --- Chairman, Mysore City Improvement Trust Board, delivered ---- judgment holding that Mr M G Krishnasami Rao had not been -- specially appointed by Government to perform the functions of a Deputy Commissioner under Regulation VII of 1894 and -- that therefore the award made by him was not legal and that the reference to the Civil Court based on such award was not entertainable by the Civil Court

The highest Court in the State having recorded the above findings, quite an impasse is now created completely

completely blocking the further land acquisition work connected with the Mysore City Improvement Trust Board and rendering all awards and references to Civil Courts made hitherto illegal and invalid.

It has, therefore, become urgently necessary that immediate steps should be taken for validating the awards made up till now by Mr.M.G.Krishnasami Rao as Acquisition Officer under Mysore City Improvement Trust Board and --- references to the Civil Court by the Chairman, City Improve--ment Trust Board formed thereon, by authoritatively --- interpreting Govt.Pro. Nos.6862-8-Ml.7707-6 dated the 17th January 1908 and 12800-4/Ml.830-08-4 dated 19th June 1909 as having the effect of specially appointing Mr.M.G.Krishna--sami Rao to perform the functions of a Deputy Commissioner under Regulation VII of 1894 (Land Acquisition Regulation) and making a declaration to that effect in the official Gazette.

The Government Advocate has been requested to forward a copy of the judgment of the Chief Court referred above, to you direct.

I have the honour to be,

Sir,

Your most obedient servant,

Chairman.

26]

23/9/11

11

Urgent

File No 67-09

Serial No

Diary No of letter replied to 2037

No 2925

ml 67-09-28

23-9-10.

General and Rev Secretariat

(Ab,)

Dy. the 23 9 1910

To

The Registrar,
Chief Court of Mysore

Date of issue 23.9.10

Signed by Narasimha

Sir,

I am directed to request the favour of your kindly forwarding to this for perusal by the Govt the entire records connected with Miss Appeal No 31 of 1909-10 on the file of the Chief Court (Chairman Mysore City Municipal Board Vs Srinivasa Murthy and Another)

I have the honour to be,
Sir,
Your most obedient servant,

SUBJECT

84
23-9 M 23/9

List of enclosur

Copied by

Examined by

MGCPL- -0 000 19 12—04

2

Enquiry 2112

190

From
The CHAIRMAN of the Board of
Trustees for the Improvement
of the City of Mysore.

To
The SECRETARY to the Govt. of
His Highness the Maharaja of
Mysore, Com. and Rev Depts.

Dated } 21st Sept. 1910
Despatched
Received
General No. 21
Enclosures

SUBJECT

In the matter of the land acquisition work of the Trust -- Board, carried out hitherto by -- the Vice-President of the Mysore City Municipal Council

No 21 Appl. 61-09-29

Urgent & Confdl

Mysore City Improvement Trust Board,
Chairman's Office,
Dated, Mysore, 22d September 1929.

From

M.Puntharaj Urs, Esq., B.A.,
Chairman of the Board of Trustees,
Mysore City Improvements.

To

C.S.Balasundaram Iyer, Esq., B.A.,
Secy. to the Govt. of His Highness the Maharaja
of Mysore, Gen. and Rev. Departments.

Sir,

In continuation of my yesterday's No.20, I have the honour to submit the following suggestions for the consideration and orders of Government.

Clause (c) of Section 3 of the Land Acquisition Regulation defines the expression "Deputy Commissioner" as including an officer specially appointed by Government to perform the functions of a Deputy Commissioner under the said Regulation.

The Land Acquisition Regulation itself provides in clause 2 of Section 4 for various auxiliary duties being performed by the subordinates of the Deputy Commissioner, so that for the performance of such duties, no special appointment of any officer by Government is needed, and the Deputy

Deputy Commissioner himself may depute any of his subordi-
-nates to perform them

When the Deputy Commissioner of the Mysore ---
District was appointed Ex-officio Chairman of the Trust --
Board, vide Government Proceedings No 6862-8-M1 77-07-6 --
dated the 17th January 1908, the Vice-President of the ---
Mysore City Municipal Council was directed to carry out the
work of acquisition, the chief responsibility devolving on
the Chairman being one of "exercising watchfulness and ----
general control over the working of the Trust Board, and ---
bringing his influence to bear on the officials in charge
of the different sections," it follows as a necessary impli-
-cation, if not expressly so, that the appointment was a ---
special appointment to perform the functions of a Deputy ---
Commissioner under the Land Acquisition Regulation within
the purview of the definition of "Deputy Commissioner" in
the said Regulation The reference in the subsequent Pro-
-ceedings of Government (No 12800-4-M1 330-08-4 dated the
19th June 1909) to the Vice-President of the Mysore City
Municipal Council as the officer in sole charge of the land
acquisition work of the Trust Board and Notification No
3758-M1 67-09-4 dated the 21st October 1909, confirm the ---
correctness of the above interpretation of the first order

order of Government. It is in this sense that the first -- order of Government was understood from the beginning and uniformly acted upon since then.

Now the question is whether the interpretation of the first order (No.6862-8-M1.77-07-6 dated the 17th January 1908) of Government should be by legislative enactment or -- by the executive order of Government It is submitted that what is now sought to be done is not the interpretation and validation of the provisions of the Land Acquisition Regula--tion but interpreting the order of Government made under a provision of the said Regulation. The acts of the Vice-President, Mysore City Municipal Council, have to be valid--ated The acts were performed in pursuance of an executive order of Government. What that order means is for the Govt. and not for the legislature to declare. In my humble ---- opinion, the Government is perfectly competent to declare -- by its proceedings what its own order meant

If the Government accept the correctness of the above view and if the Government publishes a declaration of its interpretation of the first order of Government, setting at rest all doubts as to the validity of all the acts hither--to performed by the Acquisition Officer of the Trust Board,

there will be no dispute as to all acts except in the case of Iyyasami Modaliar in which the Judgment of the Chief Court --- declaring the invalidity of the acts of the Acquisition Officer to be final Even in the case of Iyyasami Modaliar it would be a question after perusal of the Judgement of the Chief Court -- whether it is not a fit case for an application for a review of Judgement being preferred to the Chief Court

I have the honour to be,

Sir,

Your most obedient servant,

Chairman

ACT NO II OF 1905.

THE INDIAN UNIVERSITIES (VALIDATION)ACT,1905.

Passed by the Governor-General of India in Council

Received the assent of the Governor-General on the 10th February 1905.

An Act to validate action taken under the Indian Universities Act, 1904

Whereas the Indian Universities Act, 1904@ authorises the Chancellor of each of the Indian Universities to make directions , declarations and orders with a view to the constitution of the Body Corporate and the appointment of the Provisional Syndicate thereof,

And whereas various directions , declarations and orders have been made in pursuance of the said authority, and Bodies Corporate and Provisional Syndicates have been constituted and appointed thereunder,

And whereas doubts have been raised as to the construction of the said Act and as to the validity of some of the said directions, declarations and orders and as to the validity of the constitution and appointment of some of the said Bodies Corporate and Provisional Syndicates, and it is expedient to remove such doubts,

It is hereby enacted as follows -

Short title

1 This Act may be called the Indian Universities (Validation) Act, 1905

Validation of directions, declarations and orders

2 All directions , declarations and orders made as aforesaid , shall be deemed to have been duly made under the Indian Universities Act, 1904@

@ Act VIII of 1904

3. The Bodies Corporate and Provisional Syndicates

Validation of constitution and appointment of Bodies.

constituted and appointed as aforesaid shall be deemed to have been duly constituted and appointed under the said Act

-O[redacted]O-

1219

67-09—30

Office of the Government Advocate in Mysore,

Bangalore dated, 24th September 1910

From,

The Government Advocate in Mysore,
Bangalore

To,

The Secretary to the Government of His Highness the Maharaja of Mysore, General and Revenue Department

Sir,

With reference to Government Order No C 20-22/M1 67-09 dated 31st October 1909, directing to move the ---- Chief Court to revise the order of the Sub Judge of ---- Mysore in O S No 36 of 1908-09 on the file of his Court, I have the honour to report that the appeal filed has been dismissed

2 A copy of the order passed by the Honourable Judges dismissing the said appeal, is herewith submitted

I have the honour to be,

Sir,

Your most obedient servant,

Government Advocate

In the Chief Court of Mysore, at Bangalore.

Monday the 19th day of September 1910.

Present.

Mr. Justice Stanley Isaac , C. S. I., Chief Judge,

and

Mr. Justice P. S. Krishna Rao, Rao Bahadur

Mis: Appeal No.31 of 1909-10.

Chairman of the City of Mysore Improvement Trust Board (By Mr. S.Narayana Rao Government Advocate).	Appellant.	Defendant

VS.

1. Iyasami Modaliar 2. Marianna, since deceased his legal heir and son --- Madappa (~~vide C.R.P.44 of 1909-1910~~) (By Messrs C S Doraswamy Iyer & K.Narayana Rao)	Respondents.	Plaintiffs

Mis: appeal against the order of the Subordinate Judge of Mysore in O.S. No.36 of 1908-09.

This Mis: Appeal coming on for hearing on Monday the 12th day of September 1910, the Court pronounced the following -

O R D E R

This is an appeal from the order of the Subordinate Judge of Mysore who has been appointed a special judicial Officer to perform the functions of the Court under the Mysore Land -- Acquisition Regulation 1894. The order appealed from arose - out of a reference purporting to be made under Part III of the Regulation in respect of certain land which had been acquired on behalf of the Board of Trustees constituted under the City of Mysore Improvement Regulation 1903 It has been held by - the Lower Court that the proceedings of the Acquisition Officer

are vitiated by reason of the fact that the public notice -- referred to in section 9 of the Regulation was never published and that under these circumstances the Court was not competent to adjudicate upon the reference. From this order an appeal has been preferred by the Chairman of the City of Mysore ---- Improvement Trust Board.

The record discloses an extraordinary number of irregularities. In the first place it appears to be [illegible] that the officer who made the award had never been specially appointed by the Government to perform the functions of a Deputy Commissioner under the Mysore Land Acquisition Regulation 1894 No doubt, by an order of the --- Government he had been placed solely on land acquisition work connected with the Trust Board, but this is a different matter altogether The City of Mysore Improvement Regulation 1903 is based upon the City of Bombay Improvement Act (Bombay Act IV of 1898) but the scheme of the Regulation differs, from the scheme of the Act in many material particulars Under the Act a Tribunal consisting of a President and two assessors is appointed to perform the functions of the Court under the Land Acquisition Act and in any case in which the President may --- grant a certificate that the case is a fit one for appeal, an appeal lies to the High Court from the award or any part of the award of the Tribunal Under the Regulation the Board of Trustees has power to acquire land by agreement but in all -- other cases the acquisition is regulated by the provisions of the Land Acquisition Regulation

The record shows that the reference to the Court under section 18 of the Land Acquisition Regulation was made, not the acquisition officer who alone is empowered to make the -- reference but by the Chairman of the Board of Trustees who in that capacity had no locus standi whatsoever It is this officer who is styled the defendant in the Court below and it is that officer who has preferred the present appeal to this Court

The appeal then might be dismissed upon the short ground that the reference to the Court was not made by an officer empowered to make such reference but it may not be out of place to point out that on other grounds the reference was not competent.

Under section 18 of the Regulation a reference to the Court can only be made on the written request of some person interested who has not accepted the award. The request must be made within a certain prescribed time and the objection raised must relate to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

Now, in the present case no person interested even required that the matter should be referred for the determination of the Court. The Respondent Iyagami Modaliar did no doubt present an application to the Acquisition Officer but in this application he merely complained against the legality of the award and asked either that the small plot required should not be acquired at all or that the entire premises should be acquired. Therefore as one of the conditions to which the power of the Acquistion Officer to make the reference was subject, was not fulfilled, the Court had no juriddiction to entertain the reference (In re Land Acquisition Act I.L.R. XXX Bom 275).

But we would go further and would hold that even had the reference been made by competant authority and at the request of a person interested, it still could not have been entertained The scope and object of the Land Acquisition Regulation is to provide a summary method for deciding the amount of compensation payable by the Deputy Commissioner when such amount is disputed. As at present advised we are of opinion that the objections which the Court is competent to adjudicate upon are restricted to such matters as are referred to in sub-section (1) of section

section 18. Provided that the objections are so restricted the Court is not debarred from considering grounds other than those stated in the application, (In re Rustamji Jijibhai -- I.L.R. XXX Bom 341). An objection to the legality of the - procedure adopted by the Deputy Commissioner is altogether - outside the scope of the reference. As held by the judicial Committee in Secy V Secretary of State for India (I.L.R.XXXII Cal. 605 (629)) the proceedings of the Deputy Commissioner -- are administrative and not judicial and the 'award' in which - the enquiry results is merely a decision as to what sum shall be tendered to the owner of the land acquired. If a judicial ascertainment of value is desired by the owner he can obtain it by requiring the matter to be referred by the Deputy Commissioner to the Court. It was no doubt held by a Divisional Bench of the Calcutta High Court in Shyam Chander Nardraj V Secretary of State for India (I.L.R.XXXV Cal 525) that a Court has power to set aside a reference upon the -- grounds that the right sought to be acquired were incapable - of being acquired under the Land Acquisition Act It was also held by the same Bench in Gajendra Sahu V Secretary of State for India (VIII C L J 39) that a reference may be set aside upon the ground that the land actually acquired was different -- from the land referred to in the declaration issued under the Act. But we fully share the doubt expressed by Mr. Justice Mukerjee in the latter case of Raghunath Das V Collector of Dacca (XI C L J 612) as to the correctness of these rulings. As remarked by the learned Judge in that case, the object of the reference under section 18 of the Act is to secure the -- judicial ascertainment of the value of the property acquired, and other matters strictly incidental thereto, and not to -- determine whether the whole proceeding before the Collector was bad, and the award illusory as a fraud upon the Act and an evasion thereof by a merely nominal compliance with its - provisions.

No. 1477 Surdecos. Impl 67-09-31

No. 2125-67

Bangalore,
24th September 1910.

From

V. a. Rajaratna Sundaraya Boyle.
Registrar of the Chief Court of
Mysore, Bangalore

To

C. S. Balasundaram Aujaiah Boyle.
Offg Secretary to Government,
Genl: & Rev: Departments

Sir,

I have the honor to forward herewith the entire records noted in the margin as called for in his letter No. 2925-67.09.28 dated 23rd Instant and to request that the same may be returned when no longer required.—

I have the honor to be,
Sir,
Your most obedient servant,

Registrar

Misc: Appeal No. 31 of 1909-10 } in the file of the Court
Civil Revision Petition No. 44 of 1909-10 }

Civil No. 36 of 1909-09 in the file of the Subordinate Judge, Mysore.

3892
mlb 7-09-34 dt 8/11/10

Notification

In pursuance of the provisions of Sec. 23 of the City of Mysore Improvement Regulations No. of 1903, the Senior Vice-President of the Mysore City Municipal Council is authorised to perform the functions of a Dy. Commissioner under the Mysore Land Acqn Regn No. of 1894

"By order"

Sec

Secy
City Municipal Council

Z

See No 758-08
filing Q in the Council -

Vide Rule 455 of the Gazetted by 10-11 1910.

No 272
12/10/10

Translated
04/10/10

To

The Comptroller, Supreme Gazette, for publication with a request that 6 spare Copies of the Notification may be forwarded to this office for reference.

Memo 3893 Copy to the Chairman, City Improvement Trust Bd.

Copy forwarded to the Chairman, Mysore City Impt. Trust Bd, with reference to the Correspondence ending with letter No 21 dt 22nd Septr 1910, with the Notification dated 9th Septr 1910 issued by various orders passed from time to time (not specifically meant to confer on the Senior Vice Presidents of

from the Chairman, Mysore City Improvement Trust Bd regarding the powers of the Vice Presidents of the Mysore City Improvement Trust Bd in the matter of acquiring lands for the Trust Bd.

21 Notn no.
Order thereon No 3896-7
dt 11 10-
Notn observed
Govt

1) G O No 6862-8 dt 17 1 1905
2) G O No 12800-4 dt 19 6. 09
3) Govt Notn No 3753 dt 21 10

of the Improvt City & Mb. Council the powers of a Dy Comr under the Land Acqn Regn but that such a doubt has been expressed by the Chief Court in the Case under reference (Civ Appeal No 31 of 1909-1910 on the file of that Court) Govt have decided (by the supra-cascade) to invest him with those powers in the above Section in order to remove all Cause for such doubts in future.

2) The Chairman is requested to issue the directions of the Senior Vice-President

vice-president (Mr. M.G.
Venkatarama Rao) to
withdraw any pending
references and that
fresh awards should
the parties concerned
so desire this course
will not subject the
Land Tribunal to any additional
loss, inasmuch as the
amount that will have
to be paid as compensation
is the market value of
the land as it stood
on the date of the
publication of the declaration
under Sec 6 of the Land
Acqn. Regn. (vide Sec 23 (1))
which in the present case
is the date of the Notn.
under Sec 10 of the City of
Bangalore Improvt. Regn.

Yours

To, The Chairman,
Bangalore City
Improvement Trust Board,
Bangalore.

GENERAL

No 3892—*Ml.* 67-09-34, *dated* 8*th November* 1910

For purposes of the provisions of Section 23 of the City of Mysore Improvement Regulation III of 1903, the Senior Vice-President of the Mysore City Municipal Council is to perform the functions of a Deputy Commissioner under the Mysore Land Acquisition Regulation, VII of 1894.

By Order,
C S BALASUNDARAM IYER
Offg Secy to Govt, Gen & Rev Depts

G.R.S. 26]

File No. 67-09
Serial No 36

Diary No of letter replied to 2139

General and Rev Secretariat
(Rev.)
, the 5. 10 1910.

To
The Registrar of
the Chief Court
of Burma

Date of issue 10.11.10

Signed by [illegible]

Sir

I have the honour to return herewith the above records in Mis. Appeal No 31 of 1909-1910 on the file of the Chief Court received with your letter No [illegible] 09 dated the 26th September 1910

I have the

honour

to be

Sir

Your Obedt

servt

[illegible]

over

SUBJECT